



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **200939032**
Release Date: 9/25/2009

Date: 06/29/2009

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

XXXXXX
XXXXXX
XXXXXX

SE:T:EO:RA:T:3

Uniform Issue List:
4976.01-00

Legend:

A = XXXXXX
B = XXXXXX
C = XXXXXX
D = XXXXXX
E = XXXXXX
F = XXXXXX
G = XXXXXX
H = XXXXXX

o = XXXXXX
g = XXXXXX
r = XXXXXX
s = XXXXXX
t = XXXXXX
u = XXXXXX

Dear :

This is in response to your ruling request concerning the tax consequences of your proposed termination and transfer of assets to A, an organization described in section 501(c)(9) of the Internal Revenue Code ("the Code").

FACTS:

You are an organization described in section 501(c)(17) of the Code and distribute supplemental unemployment and related benefits pursuant to the terms of B. B was established

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pursuant to a collective bargaining agreement between C, D, E, and F, and G, and has been amended several times. You have been funded by the plan sponsor, C, D, and G, and provide supplemental unemployment and related benefits to employees represented by E and employed by C, D, or G under the terms of B. You consist of two funds. Fund A funded benefits for employees hired before g and Fund B funded benefits for employees hired on or after g.

C and D also provide group medical benefits to E under H. H is an unfunded, self-insured arrangement sponsored by C and D. Benefits under H are currently paid for from the employer's general assets and employee contributions.

Since g and earlier, C, D, and E recognized that the ability of C and D's competitors to negotiate less costly labor agreements allowed those competitors to undercut C and D in the marketplace. This recognition led to labor negotiations between C, D, and E. As a result of these labor negotiations, an agreement was reached under which all employer contributions to you would cease and you would be phased out. The agreement originally provided for employer contributions and benefits payable from Funds A and B to cease on r. A new fund, Fund C, would be created and \$s would be transferred from Fund B to Fund C on t. Benefits would be paid from Fund C until that fund was exhausted. According to the agreement, your liability for benefits will be guaranteed because the terms of the agreement cap the liabilities at the amount in Fund C. The assets remaining in Funds A and B would be "returned to the company". Subsequent to all of the above conditions, you would be terminated.

However, because of the presence of a possible reversion (as dealt with under section 4976 of the Code), the agreement was amended after it was effective. On u, C, D, and E created an Addendum to the original agreement. The Addendum provided that the remaining funds in Funds A and B will be transferred to a separate VEBA Trust, A. A is described in section 501(c)(9) of the Code. The funds in A would be used to pay medical benefits for union represented employees. After your funds are exhausted, you may terminate.

RULINGS REQUESTED:

You have requested the following rulings:

- (1) The transfer of assets from you to A, and your subsequent termination, will not adversely effect your exempt status under section 501(c)(17).
- (2) The transfer of surplus assets from you to A will not be treated as a "disqualified benefit" under section 4976(b)(1)(C) of the Code.

LAW:

Section 501(c)(17)(A) of the Code provides for the exemption from federal income tax of a trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if, under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be

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(within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits..

Section 4976(a) of the Code imposes an excise tax on an employer equal to 100 percent of any disqualified benefit provided by an employer-maintained welfare benefit fund.

Section 4976(b)(1)(C) of the Code defines a disqualified benefit as any portion of a welfare benefit fund reverting to the benefit of the employer.

Section 1.501(c)(17)-1(a)(4) of the Income Tax regulations provides, in part, that the trust must be a part of a plan which provides that the corpus and income of the trust cannot (before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits.

Section 1.501(c)(17)-2(d) of the regulations provides generally that a plan providing for the payment of supplemental unemployment compensation benefits contemplates a permanent as distinguished from a temporary program. The abandonment of the plan for any reason other than a business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program. Furthermore, whether or not a particular plan constitutes a permanent arrangement will be determined by all of the surrounding facts and circumstances. However, it is immaterial that a collective bargaining agreement provides that a plan may be modified, or that the plan provides that the assets remaining in the trust (after the satisfaction of all liabilities under the plan) may be returned to the employer.

Rev. Rul. 81-68, 1981-9 I.R.B. 47, deals with a trust that was created to administer a supplemental unemployment benefit plan in accordance with the terms of a collective bargaining agreement entered into between a corporation and a union. The trust had been in existence long enough to satisfy the permanency requirements in section 1.501(c)(17)-2(d) of the regulations. Furthermore, the trust was only to be terminated and remaining assets distributed to covered employees after all of the liabilities of the trust had been satisfied. The ruling stated that the termination of the trust and the distribution of the remaining assets of the trust to the employees covered by the plan, after the satisfaction of all liabilities of the trust, will not result in disqualification of its exempt status under section 501(c)(17) of the Code.

ANALYSIS:

Section 501(c)(17) provides for tax exemption from federal income tax of a trust or trusts forming a plan to provide for the payment of supplemental unemployment compensation benefits. A requirement of maintaining exemption under section 501(c)(17) is that it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for the corpus or income to be used for any purpose other than for the provision of supplemental unemployment compensation benefits. The plan described in section 501(c)(17) must be a permanent and not a temporary program.

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Based upon the information presented, you satisfy the permanency requirements of section 1.501(c)(17)-2(d) of the regulations because you have been in existence for a considerable period time and you are only being discontinued because C and D being undercut by competitors due to those competitors' ability to negotiate less costly labor contracts. Furthermore you will maintain exemption under section 501(c)(17), because C, D, and E agreed to limit your liability to the assets in Fund C. Thus, your liabilities are guaranteed, and you will transfer excess assets.

Your transfer of excess assets to A for the purpose of paying medical benefits to employees of C and D under a healthcare plan is, in effect, a distribution of remaining assets to employees of C and D, and will not affect your exempt status. See also Rev. Rul. 81-68.

Your transfer of excess assets to pay for medical benefits for employees of C and D will not be a disqualified benefit under section 4976(b)(1)(C) of the Code because the funds are being transferred to pay another type of welfare benefit and being used for the benefit of the employees. Therefore there will be no imposition of excise tax to C and D.

RULINGS:

Based on the information submitted, we rule as follows:

- (1) The transfer of assets from you to A, and your subsequent termination, will not adversely effect your exempt status.
- (2) The transfer of surplus assets from you to A will not be treated as a "disqualified benefit" under section 4976(b)(1)(C) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representatives. A copy of this letter should be kept in your permanent records.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437